

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	
	:	
Makoto SAITO	:	Confirmation No.8965
	:	
U.S. Patent Application No. 10/566,716	:	Group Art Unit: 3677
	:	
Filed: February 1, 2006	:	Examiner: MARCUS MENEZES
For: HINGE DEVICE		

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

By Official Action mailed May 14, 2008 restriction to one of the following species is required under 35 USC 121:

- I. Species 1 - Figures 1-8
- II. Species 2 – Figures 9-12
- III. Species 3 – Figures 13-16
- IV. Species 4 – Figures 17-22
- V. Species 5 – Figure 23

In response, Applicants hereby elect Species 1 of Figures 1-8 for examination in this case.

This election is made **without traverse**. Nevertheless, it is noted that the Examiner has not explicitly indicated that the species are **patentably distinct** as is required – see MPEP 806.04(h) Species Must Be Patentably Distinct From Each Other.

Mutual exclusivity or non-obvious variants, as cursorily concluded in this action, are submitted as not amounting to a patentable distinction *per se*. However, if the Examiner wishes to maintain this position, then it is courteously requested that these

standards of patentability also be applied to any art that is cited against the claims during substantive examination to avoid the impropriety of a dual standard of patentability. It is also pointed out that maintaining this position also allows each of the non-elected species to be separately prosecuted with protection under § 121 from any double patenting rejection.

Early examination on the merits is courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

**LOWE HAUPTMAN HAM & BERNER, LLP**

A handwritten signature in black ink that reads "Kenneth M. Berner". The signature is written in a cursive, flowing style.

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**Date: June 16, 2008**